Opinions Below

The opinions below of the District Court and the Court of Appeals are as set forth in the Appendix to the Petition herein. The Order and Memorandum of Decision of the District Court for the Southern District of Indiana in Martin, et al. v. Evansville-Vanderburgh School Corporation of Evansville, Vanderburgh County, Indiana, No. EV 71-C-79, entered as of September 5, 1972, not as yet reported, is set forth in the Appendix to this "Brief for Respondents in Opposition".

Question Presented

The "Questions Presented" as stated in the Petition are not stated in terms of the findings of fact in this case. Petitioners have improperly attempted to raise questions relating to the Fourteenth Amendment in general terms, irrelevant to the question presented in this case. The question presented is simply whether the Court of Appeals properly affirmed the findings and judgment of the District Court denying the application of the Petitioners, who are parents of white children attending predominantly white schools, to enjoin the Respondent School Corporation from implementing its own school desegregation plan adopted November 17, 1971, long before the complaint in this cause was ever filed on December 6, 1971, where the plan provides for (1) the reassignment and transporting (busing) of both white and Negro children in four elementary grade schools and (2) the closing of three inadequate schools, two attended by predominantly Negro children, and consequent reassigning and transporting (busing) of both white and Negro children in four elementary grade schools and

(2) the closing of three inadequate schools, two attended by predominantly Negro children, and consequent reassigning and transporting (busing) of children from those and other schools, in both cases to achieve a greater educational opportunity for the school children involved and to insure that these schools will become racially mixed with the percentage of Negroes no greater than 30%.

Statement of the Case

Petitioner's "Statement of the Case" distorts the actual facts as found by the District Court. Petitioners make selective references to certain of the evidence presented as a basis for their legal arguments and theories. Petitioners even use bold face type to claim that the Defendant School Corporation has maintained a unitary school system (p. 2), although the District Court expressly found that it was not necessary to make any finding "as to whether Defendant School Corporation retains any vestiges of a de jure segregated school system", and this finding was expressly noted by the Court of Appeals in its Opinion (Appendix, p. 2). Hence Respondent School Corporation is obliged to restate the case in terms of the findings of fact made by the District Court. Page references are to the pages in Petitioner's Appendix.

The desegregation plan was adopted in November, 1971, and provided for the closing of three elementary schools with attendant cost savings of $60,000 a year and a desegregation exchange program for both white and Negro children for four elementary schools (Appendix, pp. 5, 7). These schools were closed because there would be fifty classrooms available in September, 1972, that would not be needed in

the school system because of new school construction and a drop in enrollment (Appendix, p. 7). The plan provided for the closing of one small school that, because of the size, is insufficient, and two antiquated and educationally insufficient elementary schools with a high percentage of Negro students (Appendix, p. 7). The District Court expressly found the assignments of the students formerly attending the two elementary schools with a high percentage of Negro students are made "insofar as possible so that the students will attend elementary schools in the same districts as the high schools they will be attending and to achieve a greater distribution of Negroes among the Defendant School Corporation's elementary schools" and further that "All the elements of the Plan are made to provide more equal educational opportunities for the students in the schools in which changes in attendance areas are to be made, to eliminate elementary schools at which there is a predominantly Negro enrollment" and further that "The changes contemplated by the Plan including in particular the change in racial balance in the Defendant School Corporation's elementary schools, are valid objectives from an educational standpoint" (Appendix, p. 7). There was no evidence to the contrary.

Petitioners set forth only certain selected evidence, and do not make reference to the uncontradicted evidence presented during the trial that busing to achieve racial balance is a valid education objective (Trial Transcript, p. 73, 92); that the desegregation plan will lead to a better educational opportunity for all students and a better racial climate in the school system (Trial Transcript, p. 155); and that busing has occurred in the high schools to achieve racial balance since September, 1970 (Plaintiff's Exhibit 8; Trial

Transcript, p. 135-136). Petitioners conject that an additional reason for the adoption for the desegregation plan was "pressure of HEW" (p. 4), but there is no finding as to any such "pressure" nor would any such "pressure", even if it existed, be relevant in this proceeding.

Argument

I.

No Conflict in Circuits

The thrust of Petitioners' argument appears to be that a school board "in the north" does not have the power constitutionally to take steps to desegregate its schools on its own initiative and not pursuant to any order of any court. However, Petitioners do not set forth any of the reasons for granting a writ of certiorari which are listed as considerations in Supreme Court Rule 19. Petitioners do not assert that this decision is in conflict with the decision of another court of appeals on the same matter. In fact, all courts of appeals, without exception (north and south) that have considered this question have determined that school boards have the right voluntarily to desegregate their school systems.

In Springfield School Committee v. Barksdale (1965) 348 F. 2d 261, the Court of Appeals for the First Circuit, in considering a resolution of school authorities in Springfield, Massachusetts, to take appropriate action "to eliminate to the fullest extent possible, racial concentration in the schools within the framework of effective educational procedures" said as follows (p. 266):

" . . . 'It has been suggested that classification by race is unlawful regardless of the worthiness of the objective. We do not agree. The defendants' proposed action does not concern race except insofar as race correlates with proven deprivation of educational opportunity. This evil satisfies whatever "heavier burden of justification" there may be. Cf. McLaughlin v. State of Florida, 1964, 379 U.S. 184, 194, 85 S.Ct. 283, 13 L.Ed.2d 222. It would seem no more unconstitutional to take into account plaintiffs' special characteristics and circumstances that have been found to be occasioned by their color than it would be to give special attention to physiological, psychological or sociological variances from the norm occasioned by other factors. That these differences happen to be associated with a particular race is no reason for ignoring them. Booker v. Board of Education etc., 1965, 45 N.J. 161, 212 A. 2d 1, 11 A.L.R.3d 754 * * *.'"

In Offermann v. Nitkowski (1967) 378 F.2d 22, the Court of Appeals for the Second Circuit said as follows (p. 24):

"That there may be no constitutional duty to act to undo de facto segregation, however, does not mean that such action is unconstitutional. Since Brown is the law, some attention to color count is necessary to see that it is not violated, for it affirmatively requires admission to public schools on a racially non-discriminating basis. What is prohibited is use of race as a basis for unequal treatment."

In Wanner v. County School Board of Arlington County, Va. (1966) 357 F. 2d 452, the Court of Appeals for the Fourth Circuit said as follows (p. 455):

> "No case was cited to this court, nor has one been found, which has prohibited a school board, when drawing or redrawing school attendance lines, from reducing or eliminating segregation, even where segregation was de facto; much less when brought about by a deliberate policy of separation of the races."

In Deal v. Cincinnati Board of Education (1966) 369 F. 2d 55, cert. denied 389 U. S. 847, 88 S. Ct. 39, 19 L. Ed. 2d 144, the Court of Appeals for the Sixth Circuit said as follows (p. 61):

> "Although boards of education have no constitutional obligation to relieve against racial imbalance which they did not cause or create, it has been held that it is not unconstitutional for them to consider racial factors and take steps to relieve racial imbalance if in their sount j ment such action is the best method of avoiding educational harm. Balaban v. Rubin, 14 N.Y.2d 193, 250 N.Y.S.2d 281, 199 N.E.2d 375 (1964), cert.denied 379 U.S.881, 85 S.Ct. 148, 13 L.Ed.2d 87 (1964); Morean v. Board of Education of Montclair, 42 N.J. 237, 200 A.2d 97 (1964)."

II.

Decision Not in Conflict With Any Decision of This Court

This decision is not in conflict with any applicable decision of this Court, also a consideration listed in Supreme Court Rule 19. The Respondent School Corporation is entitled, under the United States Constitution, to consider the race of elementary school students in preparing its own plan for desegregating certain of its elementary schools, adopted November 17, 1971, for the purpose, in part, of achieving a better educational opportunity and a more equal distribution of white and Negro children in the affected schools. The Respondent School Corporation followed the guidelines set forth in Swann v. Charlotte-Mecklenburg Board of Education (1971) 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554, as follows (p. 566):

> "School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities; absent a finding of a constitutional violation, however, that would not be within the authority of a federal court. As with any equity case, the nature of the violation determines the scope of the remedy. In default by the school authorities of their obligation to proffer acceptable remedies, a district court has broad power to fashion a remedy that will assure a unitary school system."

Also, in North Carolina Board of Education v. Swann, 402 U. S. 43, 91 S. Ct. 1284, 28 L. Ed. 2d 586 (1971) the Court stated (p. 589):

> "We observed in Swann, ___ US p. ___, 28 L Ed 2d p. 566, 91 S Ct ____, that school authorities have wide discretion in formulating school policy, and that as a matter of educational policy school authorities may well conclude that some kind of racial balance in the schools is desirable quite apart from any constitutional requirements. However, if a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees."

Although this Court was dealing with a de jure segregated school system in North Carolina, this Court makes it clear that the right of a school corporation itself to achieve a measure of racial balance is determined to be a matter of educational policy within the discretion of a school board itself, and this educational policy will obviously be a valid policy for a school corporation, north or south, whether previously operating a dual or unitary school system. The question whether a court could force a school corporation to take such remedial action is a different matter entirely.

Furthermore, this Court on January 15, 1968, dismissed an appeal in School Committee of Boston v. Board of Education (1967), 227 N. E. 2d 729, which challenged the statute

providing for elimination of racial imbalance in public schools, "for want of substantial federal question". 389 U. S. 572, 88 S. Ct. 692, 19 L. Ed. 2d 778.

More recently, this Court again, on May 3, 1971, affirmed the judgment in Lee v. Nyquist (1970) 318 F. S. 710, decided by a three-judge court in New York, which enjoined enforcement of a New York statute prohibiting school boards from assigning pupils to schools for the purpose of achieving a racial balance. Nyquist v. Lee, 402 U. S. 935, 91 S. Ct. 1618, 29 L. Ed. 2d 105.

III.

Decision Moot

As a further and separate reason for denying this Petition, this case is now moot, on the terms presented by the Petitioners, because in any event, the District Court has determined as of September 5, 1972, that the Respondent School Corporation is operating a de jure segregated school system. Therefore, even by the reasoning of Petitioner, the Swann case would be applicable.

Conclusion

For the foregoing reasons, Respondents respectfully pray that the Petition be denied.

Respectfully submitted,

ROBERT H. McKINNEY

November 7, 1972

RESPONDENTS' APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

WAYNE MARTIN, EVELYN MARTIN, TRACY MARTIN, VICKY MARTIN, By their parent and next friend, OSCAR MARTIN, et al,	)	
Plaintiffs,	)	
-vs-	)	NO. EV 71-C-79
EVANSVILLE-VANDERBURGH SCHOOL CORPORATION OF EVANSVILLE, VANDERBURGH COUNTY, INDIANA,	)	
Defendant.	)	

ORDER

This cause having been heard by the Court, and the Court having this day filed its findings of fact and conclusions of law in the form of a Memorandum of Decision as follows:

(H. I.)

It is therefore considered and ordered as follows:

1. The defendant Evansville-Vanderburgh County School Corporation, its agents, servants, officers, employees and successors, and all persons in active concert or participation with them, are hereby enjoined from discriminating on the basis of race or color in the operation of the Evansville-Vanderburgh County school system.

2. The defendant is specifically enjoined from putting into effect its August 7, 1972, attendance plan for elementary pupils.

3. The defendant is ordered to reinstate and implement its May 10, 1972, attendance plan for elementary pupils for the 1972-73 school year forthwith, which plan is approved as an interim plan tending to accomplish the objectives of order number 1, supra.

4. The defendant is directed to prepare a final plan for accomplishing the objectives of said order number 1 on or before January 1, 1973, and to submit the same for the approval of the Court on or before January 10, 1973. Said plan shall be a plan for the operation of all of the public schools within defendant's boundaries, including, but not limited to, the nondiscriminatory allocation of resources, the establishment of schools, including middle schools, pupil populations and placement, faculty and staff allocation, transportation routes, extracurricular activities, and programs designed to eliminate racial misunderstandings.

5. This Court will retain continuing jurisdiction over the defendant until an acceptable plan is finally approved.

It is further considered and adjudged that the defendant pay the costs of this action.

Dated this 5th day of September, 1972.

/s/ S. Hugh Dillin
S. Hugh Dillin, Judge

Copies to:
Ronald Warrum, 113 N.W. 5th Street, Evansville, Indiana, 47708
Joe S. Hatfield, 1600 Old National Bank Building, Evansville, Indiana, 47708
Lewis C. Bose, 1100 First Federal Building, Indianapolis, Indiana, 46204

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

WAYNE MARTIN, EVELYN MARTIN, TRACY MARTIN, VICKY MARTIN, By their parent and next friend, OSCAR MARTIN, et al,	)	
Plaintiffs,	)	
-vs-	)	NO. EV 71-C-79
EVANSVILLE-VANDERBURGH SCHOOL CORPORATION OF EVANSVILLE, VANDERBURGH COUNTY, INDIANA,	)	
Defendant.	)	

MEMORANDUM OF DECISION

This cause came on for hearing on August 11, 1972, on plaintiffs' petition for a preliminary injunction, enjoining the defendant from operating its public school system in a racially discriminatory manner, in violation of the Fourteenth Amendment rights of plaintiff Negro children to equal protection of the laws. At the conclusion of the evidence, which was largely undisputed, the Court ordered the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Rule 65(a)(2), Federal Rules of Civil Procedure. The Court thereupon entered a permanent injunction against the defendant, pursuant to partial findings of fact and conclusions of law expressed orally from the bench. This memorandum amplifies and

reduces to writing such findings and conclusions, nunc pro tunc, in accordance with Rule 52(a), F.R.C.P.

Background Facts

Defendant is a public school corporation organized under the laws of the State of Indiana, with geographical boundaries coterminous with Vanderburgh County, Indiana. The City of Evansville, a city with a 1970 population of 138,764, is located within the county and a substantial number of Negroes are included in its total population. During the school year 1971-72 Negro children made up 9.8% of the elementary school enrollment in defendant's schools.

Until at least 1949[1] the public schools operated by Evansville School Corporation, one of the school corporations merged into defendant in 1958, were racially segregated, as was stipulated by the parties. Not only was segregation practiced by such corporation as to children living within its boundaries, but it cooperated in maintaining all white public schools in communities outside the borders of Vanderburgh County by accepting enforced transfers of Negro pupils from such places as Boonville and Yankeetown, in Warrick County, and Rockport,[2] in Spencer County, to its all black schools located in central Evansville.

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[1] In 1949 the General Assembly of Indiana enacted a statute, Acts 1949, Ch. 186, p. 603, Burns Ind.Stat.Ann. §§28-6106, et seq., which banned racial segregation in tax supported educational facilities within the state.

[2] It is 31 miles from Rockport to Evansville; thus Negro pupils were required to be bussed a round trip distance of 62 miles per day to attend defendant's segregated schools.

In 1962, defendant discontinued high school classes at the Lincoln school, theretofore its all-Negro high school. In 1970 it adopted a plan for high school students which resulted in Negro students being assigned to the five high schools in the system on a well integrated basis. No such plan was adopted at that time to desegregate the racially identifiable grade schools. It was not until November 17, 1971, that the defendant, after pressure from the United States Department of Health, Education and Welfare, adopted a plan which would have accomplished a degree of progress in this regard.

The 1971 plan was attacked from two directions. The plaintiffs in this action, black pupils and their parents, maintained that it did not go far enough to eliminate the vestiges of racial segregation, as required by the Fourteenth Amendment, and sought injunctive relief to require defendant to adopt a more comprehensive plan. At about the same time, another action, brought against the defendant by certain white children and their parents, was filed in the Vanderburgh Circuit Court and removed to this court. The latter action sought to enjoin implementation of the November 17, 1971, plan on the ground that defendant had no right to enact any plan at all which would alter the so-called "neighborhood school" system.

The action brought by the whites was tried by this Court in February, 1972, and judgment was entered for the defendant school corporation.[3] It was not necessary in such case

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[3] This Court's decision has recently been affirmed. Adams, et al., v. Evansville-Vanderburgh School Corporation, et al, No. 72-1413; 7 Cir., August 21, 1972 (slip opinion).

for the Court to consider the constitutional implications of the school corporation's past practices, but instead the finding was simply that the defendant, in its discretion, had the right to take action tending to reduce the then existing segregation, both under the 1949 Indiana Act and as held in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

The present action was placed on this Court's trial calendar for the June, 1972 term. Meanwhile, however, the defendant continued to consider the problem of elementary school desegregation and adopted a revised plan under date of May 10, 1972, to become effective for the 1972-73 school year. This plan was satisfactory to plaintiffs, and on June 15, 1972, the parties filed a stipulation of dismissal, which was approved by the Court the following day. In its order of dismissal, the Court found that the acts taken and to be taken by the defendant (the adoption of the new plan and its implementation), voluntarily and not pursuant to court order, were proper and would satisfy the obligations of the defendant under the equal protection clause of the Fourteenth Amendment. The order further provided that the dismissal would be without prejudice in the event the defendant failed to carry out the actions contemplated by the May 10 plan.

The defendant's board is made up of seven members, who adopted the May 10 plan by a vote of 4-3. The term of one of those members who voted in the affirmative expired on or about June 30, 1972, and a new member was appointed by the Mayor of Evansville. On August 2, 1972, with the new member voting in the affirmative, the reconstituted board adopted a resolution purporting to rescind the court approved May 10 plan, and thereafter, on August 7, adopted a different plan for the 1972-73 school year.

Meanwhile, on August 4, plaintiffs filed their motion to reinstate this action for failure of the defendant to implement the May 10 plan.

On August 8, 1972, the Court granted plaintiffs' motion to reinstate and reopen the case, pursuant to its previous order of June 16, 1972, and Rule 60(b), Federal Rules of Civil Procedure. The hearing of August 11 followed, after notice to the defendant, and evidence was heard on the merits of plaintiffs' second amended complaint.

Operative Facts

Prior to the year 1949, total segregation of Negro pupils was the rule in defendant's schools. In that year, three schools were operated for blacks: The Chestnut-Walnut school, for grades K-5, the Third Avenue school, for grades 1-7, and the Lincoln school, for grades K-12. The Third Avenue school was located in a white residential area, but no whites attended the school; on the other hand, black pupils were bussed to the school by defendant from other sections of the city of Evansville. The situation at Third Avenue remained the same until the school was closed in 1957.

Following the enactment of the 1949 Indiana Desegregation Act, the defendant followed a familiar ploy[4] by adopting optional attendance zones for areas where the population was demographically mixed. This resulted in white pupils choosing to attend white schools, and black pupils for the most part "choosing" to attend black schools. However, during the period 1949-56 a few blacks chose to attend and

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[4] See United States v. Board of Sch. Com'rs, Indianapolis, Ind., 332 F.Supp. 655, at 668 (S.D. Ind. 1971).

did attend elementary school at Wheeler, Stanley Hall, or Cedar Hall. When the Third Avenue school was closed in 1957, its pupils were sent to Chestnut-Walnut and Lincoln. When Lincoln high school was discontinued in 1962, the Chestnut-Walnut school was discontinued, and its pupils assigned to Lincoln, now a K-8 elementary school.

During their respective periods of existence, Third Avenue and Chestnut-Walnut has all black faculties. The same was true, with rare exceptions, at Lincoln until the past three school years, during which years the percentage of black faculty was, respectively, 66.6%, 63.6% and 48.4%. During the 1971-72 school year the percentage of Negro enrollment at Lincoln was 99.82%, and it had never been lower than approximately 99% at any time in its existence, although for many years the residential area immediately to the south and east of the school was predominantly white, and white pupils reside within walking distance of the school at the present time.

As a result of defendant's racial policies in establishing gerrymandered school districts, the percentage of Negro pupils in the Stanley Hall elementary school had risen to 59.94% at the time plaintiffs' action was filed, and in the Wheeler school to 76.04%. Although only 6% of all faculty personnel is Negro, the percentages in these two schools were 21.9% and 20.0%, respectively.

The plan adopted by defendant November 17, 1971, as modified and expanded by its amendment of May 10, 1972, would have closed the Stanley Hall and Wheeler schools, together with the Armstrong School, a rural, white school with an insufficient number of pupils, and would have reassigned pupils from the closed schools, and from the Lincoln school and other schools in the

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system so that all of the elementary schools in the system, save one, would have had Negro pupils, and only one additional school would have had a Negro enrollment of less than 1%; Lincoln's enrollment would have been reduced to 22.6%. All faculty and staff would have been assigned throughout the system according to the Singleton plan, i.e., distributed at each school according to the total percentages of Negroes and whites employed by the defendant.

On the other hand, the plan of August 7, 1972, would leave five of the thirty-four remaining elementary schools as all white schools, and thirteen additional schools with a Negro enrollment of less than 1%. In other words, over half of the schools would remain all white, or virtually all white. Six schools would have a Negro enrollment of 20% or more, as opposed to only two under the May 10 plan. Under the August 2 plan, Lincoln would continue to have a black student body of 76.9%, and the Howard Roosa school, never before a racially identifiable school, would become racially identifiable by having its black enrollment increased from the 1971-72 38.63% to 51.1%! The comparative statistics for all remaining schools under both plans are set out in the footnote following.[5]

Elementary Schools	5-10-72 Board Plan	8-2-72 Board Plan	Elementary Schools	5-10-72 Board Plan	8-2-72 Board Plan
Baker	18.8	20.4	Highland	11.5	0
Caze	7.2	.3	Howard Roosa	19.3	51.1
Cedar Hall	19.3	19.3	Lincoln	22.6	76.9
Columbia	15.9	.6	Lodge	7.0	.7
Culver	19.3	21.5	McGary	6.8	1.7
Cynthia Heights	.5	.5	Oak Hill	9.0	.3
Daniel Wertz	2.4	2.4	Perry Heights	9.8	.7
Delaware	17.7	10.4	Plaza Park	5.0	.6
Dexter	3.7	17.8	Scott	0	0
Evans	5.5	0	Stockwell	12.6	.7
Fairlawn	5.1	0	Stringtown	5.1	.3
Fulton	5.6	30.6	Tekoppel	7.9	0
Glenwood	28.5	28.5	Thompkins	16.8	1.3
Harper	3.4	18.6	Vogel	8.3	.2
Harwood	3.7	.7	Washington	6.0	2.6
Hebron	16.6	15.3	West Terrace	8.2	.9
Helfrich Park	8.7	.8	White	14.0	14.0

The principal reason advanced by the defendant for its August actions was that it proposed to establish a middle school program, to be fully effective in 1977, and that it was necessary for all children to attend school in their own neighborhoods "for planning purposes." Although the middle school concept may well have merit, if such schools are located so as to reduce segregation, the argument that planning can only go forward if pupils attend the nearest elementary school in the interim strikes the Court as fatuous.

Conclusions of Law

The Court has jurisdiction of the parties and of the subject matter of this action. 28 U.S.C. §§1343(3), 1343(4); 42 U.S.C. §1983; Amendment Fourteen, Constitution of the United States.

The defendant and its predecessor Evansville School Corporation have practiced de jure segregation in the operation of the Evansville, now Evansville-Vanderburgh County public school system, and have discriminated against Negro pupils in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. The defendant has therefore, since the day that it came into existence, been under a continuing duty to remove all vestiges of prior segregation, but has failed to do so, most notably in the matters of the Lincoln school and in the assignment of faculty. Swann v. Charlotte-Mecklenburg Bd. of Ed., supra; Green v. County School Board, 391 U.S. 430 (1968); United States v. Greenwood Municipal Separate School District, 406 F.2d 1086 (5 Cir. 1969); Kelly v. Altheimer, 378 F.2d 483 (8 Cir. 1967).

The defendant committed an act of de jure

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segregation when on August 2, 1972, it rescinded its own May 10, 1972, plan to desegregate the elementary schools. The rescission of a school desegregation plan, previously adopted by a school board pursuant to an existing duty, is unconstitutional, and the action of August 2, 1972, is a nullity. North Carolina Bd. of Ed. v. Swann, 402 U.S. 43 (1971). Bradley v. Milliken, 443 F.2d 897 (6 Cir. 1970); Keyes v. School District No. 1, Denver, Colorado, 303 F.Supp. 279, 313 F.Supp. 61 (D. Colo. 1969, 1970).

The law is with the plaintiffs. A permanent injunction will issue, enjoining defendant from discriminating on the basis of race or color in the operation of its schools, from implementing its August 7, 1972 plan, reinstating the May 10, 1972 plan as an interim measure, and ordering the defendant to complete a final plan for elimination of the last vestiges of racial segregation from its school system before January 1, 1973. Said final plan, which may contain provisions for middle schools, shall be filed not later than January 10, 1973, for the approval of the Court.

Dated this 5th day of September, 1972.

/s/ S. Hugh Dillin
S. Hugh Dillin, Judge

Copies to:
Ronald Warrum, 113 N.W. 5th Street, Evansville, Indiana, 47708
Joe S. Hatfield, 1600 Old National Bank Building, Evansville, Indiana,47708
Lewis C. Bose, 1100 First Federal Building, Indianapolis, Indiana, 46204